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This study argues that employing a moral strategy constitutes a more effective means of waging counterinsurgency (COIN) warfare than unjust methods. Observance of jus in bello (justice in war) principles mandates tactics which, historically for democracies, advance strategic goals while prohibiting actions that contribute to defeat. The body of research reviewed here also serves to defeat the arguments that fighting morally in COIN exposes soldiers to increased danger. To develop these points this paper: 1) discusses customary and conventional jus in bello principles within the framework of COIN to define what it means to fight a "just" counterinsurgency; 2) examines existing literature that investigates the efficacy of employing moral tactics in COIN; and 3) evaluates the effectiveness of just COIN strategy through the case study of the United States actions in the Philippine Insurrection.

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MASTER OF MILITARY STUDIES

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Just War and Counterinsurgency: Effective Strategy and the Right Thing to Do

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF MILITARY STUDIES

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Executive Summary

Title: Just War and Counterinsurgency: Effective Strategy and the Right Thing to Do

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Thesis: This study argues that employing a moral strategy constitutes a more effective means of waging a counterinsurgency (COIN) warfare than unjust methods. Observance of *jus in bello* (justice in war) principles mandates tactics which, historically for democracies, advance strategic goals while prohibiting actions that contribute to defeat. The body of research reviewed here also serves to defeat the arguments that fighting morally in COIN exposes soldiers to increased danger.

Discussion: Recent changes to the ISAF counterinsurgency strategy in Afghanistan to one that openly advocates *jus in bello* principles raises the legitimate question: Is fighting in a moral manner the best tactic for success in COIN as opposed to less restrained and more expedient measures? This study aims to answer this question by: 1) discussing customary and conventional *jus in bello* principles within the framework of COIN to define what it means to fight a "just" counterinsurgency; 2) examining existing literature that investigates the efficacy of employing moral tactics in COIN; and 3) examining United States COIN strategy through a case study of the Philippine Insurrection.

Conclusion: The Philippine Insurrection case study confirms the body of existing research on just war theory and counterinsurgency. Moral tactics are a better method of defeating insurgents and gaining popular support than those focused on excessive coercion. In order to guard against moral transgressions in current conflicts and to avoid the potentially disastrous results, the United States military should employ a vigorous ethical training initiative for its forces.

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PREFACE

At its most basic level, this thesis springs from ideas and experiences drawn from my time as commander of C Troop, 10th Cavalry, 1st Brigade, 1st Cavalry Division during Operation Iraqi Freedom II in 2004 and 2005. As the Troop struggled to complete our mission in a complex counterinsurgency environment, and maintain our dignity and honor in the midst of inordinate casualties caused by an elusive enemy, we faced daily dilemmas concerning how to apply force justly to achieve our objectives. In retrospect, a better understanding of how the Law of War specifically applied on the streets of Eastern Baghdad and how observance of these principles would contribute to the larger campaign would have benefitted us all. The arguments that follow make the case that fighting justly is the best way to achieve success in a counterinsurgency--an argument that was not always obvious in the midst of our existential struggle. The heroic actions during this deployment as well as those that fell short of the ideal have provided the impetus to explore just war theory in counterinsurgency, and to offer a better method for ensuring its proper application.

The guidance and critical comments of my mentor, Dr. Rebecca Johnson, have greatly enhanced my understanding of just war theory and have contributed immensely to this work. Lieutenant Commander Larry Wilcox and my father, Joseph Wyszynski Sr., have also assisted with their helpful edits.

Introduction

A resurgent Taliban insurgency threatens United States policy objectives in Afghanistan. The International Security Assistance Force in Afghanistan's (ISAF) commander, General Stanley McChrystal, following established U.S. counterinsurgency (COIN) doctrine, has introduced a new strategy designed to defeat internal threats to Afghan sovereignty. A central tenant to this strategy includes provisions to fight ethically in accordance with the law of armed conflict. He argues that disproportionate and indiscriminate methods are counterproductive and conversely that a just COIN strategy would be more effective in the battle to win popular Afghan support.¹ An undercurrent of belief and practice among U.S. soldiers, evidenced by a 2007 poll, which demonstrated that a significant minority acted immorally in combat and that a much larger percentage tolerated such conduct among peers, challenges the type of approach General McChrystal advocates.² A reasonable question in light of this dilemma is: Is fighting in a moral manner the best tactic for success in COIN as opposed to adopting less discriminate and more expedient measures?

This study argues that a just strategy is a more effective means of waging a COIN campaign. Observance of *jus in bello* (justice in war) principles mandates tactics which, historically for democracies, advance strategic goals while prohibiting actions that contribute to defeat. The body of research reviewed here also serves to challenge the argument that fighting morally in COIN exposes soldiers to increased danger. On the contrary, it indicates that fighting a just counterinsurgency permits aggressive, but well planned, action both against the insurgency and its civilian sympathizers. It permits legal kinetic means to destroy those who pose direct harm to troops and civilians. Furthermore, fighting morally also allows adherents to maintain the

moral high ground, indirectly preventing the creation of new insurgents and protecting counterinsurgents against future threats.

This paper consists of three parts. First, the background presents what it means to fight a just counterinsurgency according to customary and conventional international law, and U.S. doctrine and law. This section provides the theoretical basis to explain why moral tactics work in a COIN environment. It also offers a potential starting point for future efforts to create tactics, techniques, and procedures to guide moral conduct in COIN. Next, the study assesses the efficacy of just versus unjust tactics in two sub-sections. The first consists of a critical review of existing scholarly research on the subject of whether just tactics benefit the overall COIN strategy. This review clearly demonstrates that an overwhelmingly amount of existing literature supports the thesis. The second sub-section provides a case study of the Philippine Insurrection to demonstrate the practical benefits of moral tactics as well as the potential dangers to the overall strategy when soldiers fail to follow moral precepts. Moreover, it indicates, not surprisingly, that ethical training could improve adherence to a just strategy and consequently lead to improved results in the overall campaign. The paper concludes with recommendations and implications on employing ethical professional development to ingrain the imperative for fighting morally in COIN into the U.S. military's organizational culture.

Background

What does it mean to fight a just counterinsurgency? By obeying the norms of *jus in bello* for the legitimate use of force against insurgents and the protection of civilians, soldiers can be said to be fighting a moral counterinsurgency. The defining features of COIN--the collocation of insurgents and the population and the failure of insurgents to abide by the laws of war--pose significant challenges to counterinsurgents who seek to fight justly. This section will demonstrate those challenges and how military doctrine and law have attempted to support just conduct in COIN. By first defining specific precepts for fighting a just counterinsurgency, this study establishes a baseline for the following section which tests the efficacy of a moral COIN strategy.

Counterinsurgency Defined

United States doctrine defines counterinsurgency as "military, paramilitary, political, economic, psychological, and civic action taken by a government to defeat an insurgency." Insurgency is "an organized movement aimed at the overthrow of a constituted government through the use of subversion and armed conflict."³ Counterinsurgencies constitute struggles among the people for political power between insurgents and counterinsurgents. Insurgents seek to overthrow the existing government while counterinsurgents use all "instruments of national power to sustain the established or emerging government."⁴ Alienating insurgents from the population and reducing their ranks are two fundamental aspects of successful counterinsurgency. "The population is the vital element for insurgent success. They [counterinsurgents] have to win the population over to its side."⁵

Based on the nature of counterinsurgency as warfare among the people, the implications of *jus in bello* become important in two areas. The first is treatment of civilians. Because counterinsurgents must maintain public support, how the military interacts with the civilian population to win their "hearts and minds" is a critical concern. Second, because insurgents exist and operate among the people, the amount of harm that counterinsurgents cause while engaging the enemy becomes paramount. The collateral damage resulting from killing or capturing insurgents, along with the moral outrages associated with detainee mistreatment, both have the potential to disenfranchise the population if government forces erroneously or unnecessarily harm its citizens in the course of the conflict. Counterinsurgents must consider how their "direct approach" affects the very people whose support they are striving to gain. The following subsection takes general *jus in bello* precepts and refines them into specific moral mandates for fighting a counterinsurgency.

Just War Mandates on COIN Strategy

Building on the work of Michael Walzer, Brian Orend summarizes customary and international law regarding *jus in bello* into eight "external" rules that apply to any armed conflict: "discrimination and non-combatant immunity; benevolent quarantine for POWs [prisoners of war]; due care for civilians; the DDE [Doctrine of Double Effect]; proportionality; no means *mala in se*; no reprisals; and obey all international laws on weapons prohibitions."⁶ These serve as a useful starting point to define what it means to fight a "just" counterinsurgency. The subsequent paragraphs expand upon this rubric and look at each of these requirements through the frame of U.S. military doctrine and law to yield specific moral mandates for fighting a just COIN strategy. Because of their importance to COIN strategy, these requirements address the treatment of civilians and tactics to defeat insurgents in detail.

Discrimination and non-combatant immunity simply means soldiers must only engage legitimate targets where legitimate targets are “anyone or anything engaged in harming.”⁷ Civilians may not be attacked; however, if they are in the act of directly supporting the insurgency, they become valid targets. An example of civilian complicity in an insurgency would be a civilian purposefully smuggling illicit explosives to insurgents. Regardless of what his ideology or motives may be, he becomes a valid target while supplying or aiding the enemy. Once they cross the line to using violence, complicit civilians become combatants. As such, they surrender their right to life and liberty and may be targeted when they are engaged in the act of harming. If individuals are suspected to be insurgents, security forces may detain them if there is credible evidence to do so at which point they become detainees. *The Law of Land Warfare, Field Manual 27-10*, and the *Uniform Code of Military Justice*, which all prescribe legal behavior for soldiers, provided the minimum legal basis to achieve the statements above; however, campaign specific rules of engagement may further limit the level of violence used against insurgents or civilian supporters.⁸ In COIN, where the support of the population is the center of gravity, accurately assessing who is a combatant is of paramount importance. Identification errors that result in innocent civilians killed or injured can damage COIN goals by creating distrust in government security forces' capabilities and strengthening support for insurgent ideology. Counterinsurgents have little margin for error here.

Benevolent quarantine for prisoners of war (POWs) requires that U.S. military personnel treat captured insurgents who adhere to the laws of war in accordance with the Geneva Conventions' prescriptions for prisoners of war. Because most insurgents purposefully do not obey the laws and customs of war, they are not entitled to POW status as outlined in conventional law. Consequently, they subject themselves to criminal prosecution by military

tribunal or host nation court for their insurgent activity. Notwithstanding, insurgents are still “protected persons” and counterinsurgents must care for them humanely.⁹ Chapter Five of *The Law of Land Warfare*, outlines specific treatment requirements in detail, but a good rule of thumb is to treat them as prisoners of war in all regards except for their criminal culpability. In this vein, the Detainee Treatment Act of 2005 and Department of Defense Directive 2310.E requires that no one in DoD custody can be subject to “cruel, inhuman or degrading treatment or punishment.”¹⁰

Due care for civilians requires recognition of their basic human rights.

Counterinsurgents should always respect civilian life, liberty, and property in the course of conducting military operations and may not target them directly for harm. Innocent civilians are non-combatants. On the COIN battlefield, this applies even to civilians who may ideologically approve of the insurgent cause, but do not actively support it.¹¹ Again, as a central tenant of COIN strategy is to gain the support of the relevant population, the proper treatment of civilians is of utmost importance because it demonstrates that the government respects the citizens whose support it requires for success. The Army COIN field manual, FM 3-24, clarifies that existing laws permit civilian detention if counterinsurgents suspect them of insurgent activity, a crime, or to gather information. If evidence exists, civilians may be detained, tried, and punished if convicted. If however, no evidence of wrongdoing exists, or if counterinsurgents simply want to question a civilian about illicit activity, the civilian may not be held for any length of time. In the same spirit security forces cannot compel non-combatants to provide information by torture or threat of harm or reprisals.¹² A final obligation here demands that counterinsurgents respect civilian private property. This requirement does not apply to items directly and intentionally supporting insurgents. Furthermore, private property may lawfully be destroyed in the legitimate

course of operations provided that counterinsurgents meet several conditions, which leads into the following requirements—proportionality and the doctrine of double effect.¹³

Proportionality, in terms of *jus in bello*, constrains counterinsurgent violence to only that which is militarily required and proportional to the advantage gained. In other words: "The principle of proportionality requires that the anticipated loss of life and damage to property incidental to attacks may not be excessive in relation to the concrete and direct military advantage expected to be gained."¹⁴ This precept bears critical implications for counterinsurgents. It applies to all counterinsurgents down to the lowest level and requires that they consider the success of their entire mission, rather than a single engagement, when deciding whether and how to employ force in the pursuit of their military objectives.

Tangential damage to property or loss of life could be more detrimental than the advantage gained by killing a single insurgent. Counterinsurgents need to include second and third order effects in this calculus. For example, the effects of negative press reports or the enemies that might result from relatives of civilians killed in the course of an otherwise legitimate drone strike must be considered before deciding to use force. Proportionality demands that counterinsurgents consider the potential intended and unintended results of their operations as well as the level of violence or weapon systems used in particular operations. Here again, nothing restricts offensive kinetic operations from available tactics; however, intelligent thought and moral reasoning simply need to precede them.

The **doctrine of double effect (DDE)** assists war fighters with maintaining proportionality and determining when it is "morally acceptable" to injure civilians or to harm their property.¹⁵ This is particularly useful in COIN where distinguishing the enemy from civilians is more

difficult than conventional warfare. The DDE has four generally accepted guidelines to determine the morality of an action, which Michael Walzer describes as:

- 1) The act is good in itself or at least indifferent, which means, for our purposes, that it is a legitimate act of war.
- 2) The direct effect is morally acceptable--the destruction of military supplies, for example or the killing of enemy soldiers
- 3) The intention of the actor is good, that is, he aims only at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends
- 4) The good effect is sufficiently good to compensate for allowing the evil effect; it must be justifiable under Sidgwick's proportionality rule.¹⁶

This "test" for morale legitimacy is consistent with U.S. doctrine as well as the *Law of Land Warfare*. If soldiers at all levels employed the DDE, it would guard against excessive means used to defeat insurgents and inordinate damage to civilians which could each hamper their mission.

No means *mala in se* dictates that soldiers cannot use tactics that are inherently evil. The principle outlaws actions that are, by their very nature, an affront to humanity.¹⁷ An example would be using genocide to destroy an entire segment of the population to prevent it from supporting an insurgency. The *Uniform Code of Military Justice*'s punitive articles prohibits outrages such as rape, torture, and murder, and it provides sufficient flexibility in other general articles which regulate behavior to guard against soldiers committing other atrocities of this type. With respect to defeating insurgents or relations with the civilian populace no means *mala in se* is a straightforward concept for soldiers. United States forces will recognize these types of behaviors as clearly criminal and immoral from their knowledge of UCMJ and their own personal conscience.

International law and the law of armed conflict only permits **reprisals** in order to stop an adversary from violating *jus in bello* and then, only after very specific conditions are met. Reprisals are acts of retaliation that would normally be considered unlawful.¹⁸ By international

convention, belligerents should exhaust all means available prior to resorting to reprisals; additionally, the most senior military commander available should be consulted prior to belligerents committing an act of reprisal.¹⁹ Tactical-level counterinsurgents never have the legal or moral authority to engage in reprisals on their own accord and may never do so against civilians or prisoners of war. Consequently, they should avoid reprisals altogether. Besides the legal requirements, one can easily imagine how reprisals aimed at insurgents, who hide among the people, could go awry and cause any number of unintended consequences that could alienate the population.²⁰

A final mandate of a just counterinsurgency is a simple one. The US Military should **obey international laws on weapons prohibitions**. The Hague and Geneva Conventions outlaw specific weapons meant to cause undue suffering. The *Law of Land Warfare* lists these, and the United States does not provide its forces with weapons that violate these treaties. Counterinsurgents can follow these prohibitions by simply using only assigned weapons and ammunition. They should avoid any attempts to improvise self-made weapons or to use captured systems in the course of the fight.

Up to this point, this work has defined counterinsurgency and the moral requirements for fighting a just one. These mandates allow offensive operations or the “direct approach” to capture or kill insurgents; however, they require that counterinsurgents pursue such actions in a sensible manner. They must consider the effects of their action on the civilian population. Also, they must respect civilian rights and provide humane treatment for detainees whether they are insurgents, complicit civilians, or criminals. Beyond being morally correct, doing so reinforces a counterinsurgent’s legitimacy, which is critical for winning support from the population. Certainly, the advantages of fighting morally are intuitively obvious. Obeying the law of armed

conflict in COIN: 1) provides a legal method for discriminating between insurgents and civilians, 2) permits a range of kinetic actions to defeat insurgents, and 3) guards against acts that could disenfranchise the population. At the same time, some military experts question whether this more restrictive approach is effective in eliminating the insurgent threat. The following section tests the just COIN strategy as described above to determine, in reality, if it is more effective than more aggressive methods.

Empirics

Having defined what it means to fight a "just" counterinsurgency, this section tests the hypothesis. First, it briefly examines existing research on past counterinsurgencies. The purpose here is not to recount the studies, but to demonstrate that an overwhelming portion of them supports the notion that fighting morally is a more effective way to conduct a counterinsurgency. Second, it examines the case study of the Philippine Insurrection in three parts. Initially it provides some background orientation to put the conflict in context. Subsequently, it examines the Philippine Insurrection after General MacArthur adopted the Lieber Code as a moral baseline to demonstrate the benefits of fighting morally. Finally, it looks at violations of the law of armed conflict that occurred in spite of official policies to show the negative effects they can have on overall strategy. In total, this section makes a case for the practical value of pursuing a "just" COIN strategy and the need for ethics training to ensure that soldiers in the heat of battle properly apply moral precepts.

Existing Research: The Practical Value of a Moral COIN Strategy

This study reviewed a wide body of literature on just war and counterinsurgency. From this literature, it isolated ten works that dealt all or in part with the efficacy of a democracy adhering to the law of armed conflict in COIN.²¹ Six books addressed whether just tactics

worked, while all ten investigated the results of "unjust" COIN strategies. The clear conclusion of this review is that moral tactics advance COIN goals while immoral ones detract from it, although an important caveat applies.

Six of the sources examined specifically addressed whether just COIN strategies are effective.²² All six indicated that they were. Two common themes emerged from these works in explaining why moral tactics work. First, restraining conduct to moral tactics as predicted prevents atrocities that could, when publicized, diminish support for the counterinsurgency. It allows counterinsurgents to maintain domestic political will to sustain the counterinsurgency either at home, if the counterinsurgents are intervening as a third party, or within their own country. Second, in the battle for the population, discriminate and proportional actions prosecuted against insurgents creates confidence in the government. This helps individuals side with the government against insurgents.²³

The opposite is true of an immoral COIN strategy. Also as predicted, the evidence overwhelmingly indicates that when democracies use unjust methods, it frustrates their goals. Eight of the ten studies used advanced this viewpoint.²⁴ The main reason, as might be expected, is because atrocities, when publicized, decrease the will of the populace or intervening third parties' domestic constituency to continue supporting the counterinsurgency. In response, dependent upon popular support to maintain political power, elected policymakers must alter policy goals or face electoral consequences.

Gil Merom holds a different position in *Why Democracies Lose Small Wars*. Although he also argues that immoral acts undermine democratic political will to sustain a counterinsurgency, he concludes that coercive violence is a more influential factor in determining success.²⁵ He suggests that extreme violence and the success it brings can override

the negative consequences of immoral action.²⁶ Evidence discussed below will show why Merom's views on the benefits of coercive violence for democracies should be discounted.

Alexander Downes' work, *Targeting Civilians*, is sound and provides a caveat to the conclusion that excessive violence does not work. He suggests that violating non-combatant immunity can be productive when the population in question is small and geographically isolated.²⁷ All of the sources, including Merom and Downes, are consistent with the ideas that law of war violation damage domestic political will. Downes and Merom disagree that excessive violence forces the population to support the insurgency in the ideological battle. Both suggest that extremely violent coercion can be an effective means to compel the population to support the government. The next paragraphs expound on the works of Merom and Downes.²⁸

Merom's conclusion that "brutality pays" for a democracy relies on irrelevant data, and it draws erroneous short-sighted conclusions.²⁹ He uses historical examples to illustrate his point that the level of indiscriminate violence employed disproportionately against insurgents and indiscriminately against civilians relates directly to success in counterinsurgency. In choosing his data set, he repeatedly commits two errors. First, he uses examples where the counterinsurgent countries are not democracies. For example, he includes German wars in Africa at the beginning of the twentieth century, Iraqi conflicts with the Kurds and Shiites during Saddam Hussein's regime, and Communist Chinese suppression of Tibet in 1950. Clearly all of these states are not democracies, and therefore cannot be referenced as accurate models for successful democratic counterinsurgent strategies. Autocratic regimes have significantly more liberty in using immoral tactics than do transparent democracies. Public outrage over atrocities will have a much smaller effect on policy in countries where maintaining political power does not depend on the consent of the governed. Had his work been called why dictatorships win

counterinsurgencies, his conclusions may have been valid. However, since we (and the title of his book as well as his thesis) are concerned with tactics available to democracies, we cannot accept his conclusions on the use of force drawn from examples of autocracies. Second, Merom draws erroneous conclusions for the data he does use. As an example of the effectiveness of immoral violence in COIN, he cites General Keitel's brutal mandates during the Nazi occupation of Eastern Europe. Keitel's commanders were able to maintain order over a large area with their limited security forces "by applying suitable draconian measures" that he sanctioned.³⁰ Merom ignores the counterproductive effects these measures had upon both the morale of partisans to resist as well as the indirect effects that these outrages had on solidifying Allied resolve to defeat them. Clearly, the Nazi's failed to realize their goals of a larger homeland although they may have enjoyed short-term success in quelling insurgents. Immoral violence did not pay in this case as he asserts. Because of the shortcomings of his argument, we should discount Merom's conclusions on the efficacy of unjust violence.

Concerning immoral tactics in counterinsurgencies, Downes' research generally supports the notion that mistreatment of civilians and disproportionate tactics are counterproductive. He makes the case, however, that, in isolated instances such as the Boer War, immoral actions have worked. The important caveat here is that the population supporting insurgents must be very small and geographically isolated with respect to the entire country.³¹ Although Downes' argument is sound, one should also consider that he also acknowledges the negative effects that British violations of the law of armed conflict had on British domestic political will. This recognition suggests that, even for this specific instance, the benefits of excessive coercion do not clearly outweigh the negative consequences resulting from immoral conduct. Moreover, one of the main tactics that he credits for winning the war, forcing civilians into concentration camps

and using their suffering to induce the Boers to quit, is much less acceptable (and illegal) now than in the early twentieth century.³² This fact could amplify the negative effects of unjust actions and compromise political will if the same tactics are used in a contemporary conflict meeting the same conditions.

To conclude, significant scholarly work exists to support the argument that ethical conduct is more effective at defeating an insurgency than unrestrained combat. Fighting morally builds confidence in the government while preventing outrages which, at an individual level, could compel people toward the insurgency, and, at the state level, could undermine the political will to sustain and resource the counterinsurgency. Based on this evidence, the decision to use just tactics seems all too obvious; however, warfare, and COIN in particular, is not so simple. As Downes suggests, there may be instances where coercive violence works, particularly at lower echelons where soldiers are engaged in a life and death struggle. During times of high stress and violent conflict, there are understandable temptations to resort to excessive violence against the enemy and a seemingly unsympathetic population. Because of the limited information that they have relative to the scope of the entire operations, the long-term or distant effects of their actions may not be intuitive, and, as a result, security forces could be more apt to use all means available to reduce the immediate threat.

Next, this study will look to the case study of the Philippine Insurrection. A brutal and complex undertaking, this conflict demonstrates the difficulty of employing just tactics, while at the same time making the case that maintaining a just strategy is more effective.

Philippine Insurrection

Examining the Philippine Insurrection serves two purposes. First, it shows the benefits of adopting a relevant moral code for security forces engaged in a complex and violent insurgency.

When established as a policy tenet, the law of armed conflict of the day, the Lieber Code, made discrimination between innocent civilians and combatants much simpler. It provided a clear legal method for isolating the enemy and establishing the range of tactics that could be brought against insurgents and complicit sympathizers. The other reason for using this case study is to highlight the requirement for practical ethical training to ensure that counterinsurgents apply moral precepts properly in complex and hazardous situations where existential stresses and mission demands cloud perceptions of what is right. United States forces clearly committed unethical acts despite the existence of ethical standards. In most cases this behavior was unintentional, based upon a poor understanding of the Lieber Code and its express or implied intent. Although the consequences did not compromise the success of the counterinsurgency in this instance, they did damage the United States' ability to achieve its policy objectives. After some brief background for context, the following two sub-sections will examine each of these arguments in detail.

Philippine Insurrection Context

The United States initiated conflict with Spain in the Philippines on May 1, 1898 with Admiral Dewey's successful naval attack on the Spanish fleet and blockade of Manila. Emboldened by this quick success, President McKinley ordered an expeditionary force to the Philippines to compel a Spanish surrender. Domestically, the question of whether to pursue colonialism dominated U.S. politics. Through the venue of the issue of the Spanish American War, a debate raged as to whether the U.S. should pursue imperialism or limit foreign policy interests as anti-imperialists suggested. Expansionists won out in the short term.

Prior to the arrival of U.S. land forces, Admiral Dewey encouraged revolutionary Emilio Aguinaldo to resume an uprising against the Spanish establishment in the Philippines. (A year

earlier, Aguinaldo had led a nationalist revolt which ended in defeat.) The United States armed Aguinaldo's Army of Liberation, to fight against Spanish interests in the Philippines.³³ Aguinaldo's forces proved a skilled fighters, seizing a significant portion of Luzon. Although significant Spanish forces remained, on June 12, 1898 Aguinaldo declared Philippine independence. Shortly afterwards, he began establishing the framework of a national government with what he believed to be U.S. support.³⁵

The U.S. VIII Corps, under the command of General Wesley Merritt, arrived in the Philippines in June and July 1898. They seized Manila with little Spanish resistance on August 13. Disregarding Aguinaldo's Army of Liberation, Merritt purposefully denied their assistance in the attack, and he made a secret agreement with the Spanish commander to spare his forces from the Filipino Army in exchange for a quick surrender.³⁶ The United States' aims at this point were unclear as to whether to support Filipino independence or annex the Islands. While peace negotiations proceeded in Paris between the United States and Spain over both the Philippines and Cuba, the Filipinos established a constitution and elected Aguinaldo President on January 21. On December 10, 1898 the United States signed the Treaty of Paris with Spain, and America agreed to pay 20 million dollars for the Philippines, clearly demonstrating the President's decision to maintain control of the Islands.

A debate occurred in the United States Senate concerning whether to annex the Philippines via approval of the treaty. Anti-imperialists argued against annexation and the path to colonialism while expansionists rallied for ratification. During the debate, armed conflict started on the night of February 4, 1899 between the Filipinos desiring independence and U.S. troops who President McKinley had charged on December 21 to occupy and administer the entire territory of the Philippines under a military government.³⁷ The Senate agreed to ratify the

treaty on February 6. Although there is a valid debate as to who legitimately controlled the Philippines at this point, for the purposes of this study, the United States became the de-facto government of the Philippines while forces under Aguinaldo, challenging U.S. sovereignty, became insurgents by default.

A counterinsurgency ensued for the next three years. From February to November 1899, the U.S. waged a conventional fight resulting in the destruction of Aguinaldo's Army of Liberation. Aguinaldo evaded capture along with a sizable portion of his forces and began a guerilla campaign with the ultimate goal of achieving Filipino independence. The U.S. dispersed its limited forces throughout the Islands and began a series of civil-military actions in an attempt to establish governance. Small forces relative to the expanse of the Philippines, rugged terrain, and poor communications all resulted in an environment of decentralized control and fertile grounds for a growing insurgency.³⁸ Insurgent activity peaked in the fall of 1900 when Aguinaldo's *Insurrectos* initiated attacks throughout Luzon in the hopes of influencing the U.S. Presidential elections in favor of William Jennings Bryan who had promised to grant Philippine independence.³⁹ General Arthur MacArthur (father General Douglas MacArthur), who became the supreme commander in the Philippines in 1900, was aware of the grave situation: "He recognized that the Army was in the midst of a guerilla war and he believed that the majority of Filipinos supported the revolutionaries, not the United States."⁴⁰ He initiated a counterinsurgency campaign to permanently establish U.S. authority.

The Lieber Code Enables Successful COIN Strategy

In order to defeat the growing insurgency, General MacArthur established martial law in the Philippines in December 1900. The relatively passive civil-military programs passed by his predecessor, General Otis, failed to address insurgency activity. Recognizing the need to isolate

insurgents who were thriving among the people and being supported by them, MacArthur used the 1863 Lieber Code, or General Orders 100, as a means for discriminating among insurgents, complicit civilians, and the innocent population, and for establishing acceptable limits of moral behavior of counterinsurgent forces. Created during the U.S. Civil War, and employed by the Union Army, the Lieber Code specifically dictated ethical conduct during a counterinsurgency for both belligerents and civilians. It also outlined punishments that could be imposed upon those who failed to follow its edicts.

General MacArthur reinforced to his command that General Orders 100 was still valid. He took the most applicable precepts and published them to everyone involved in the insurgency in a proclamation on December 20, 1900. To ensure it was widely understood, MacArthur had it published in English, Spanish, and Tagalog, a prevalent native language.⁴¹ The proclamation explained that, in order to receive protection from the United States, Filipinos had to comply strictly with the occupation authority. Those civilians who supported the insurgency would be subject to punishment as war rebels or traitors. Those *insurrectos* who fought without uniforms lost the right to be treated as prisoners of war and could be tried as criminals. This proclamation and General Orders 100, opened the door for much tougher, but legal, policies for local commanders to use in pursuing insurgents and sympathizers. It provided U.S. forces with a clear way to discriminate between civilian and insurgents and a guide to help them in proportionality calculations. Furthermore, it allowed military tribunals to punish *insurrectos* and their supporters. In doing so, it forced Filipinos to make a choice between supporting the insurgency or the U.S. government. The policy worked exceptionally well in the both of the military districts of Northern and Southern Luzon, which both had insurgencies that threatened U.S. control.⁴²

By late 1900, the Department of Northern Luzon faced significant challenges that MacArthur's new ethical policy prescriptions helped to overcome. Insurgents, consisting of regular units and militias, frustrated government efforts to maintain control and enjoyed significant support from the traditional leadership elites, the *principales*.⁴³ General Orders 100 allowed a number of new successful tactics. The number of civilian prosecutions for support to the insurgency rose dramatically as a result of the new policy. In the Ilaco region, for instance, there were "as many cases tried in January and February 1901 as had been tried in all of 1900."⁴⁴ The penalties under martial law for supporting the insurgency were also stricter for violations, increasing from a marginal fine to "two years at hard labor."⁴⁵

These punishments were ethical according to the "due care for civilians" principle for several reasons. First, they were imposed by military tribunals and not by arbitrary decisions. Second, the populace received clear guidance on what behavior was illegal under martial law as well as the severity of sentences that could be imposed if found guilty. Once convicted of a crime by a legitimate court, civilians no longer enjoy their right to life, liberty, and property. By publicizing the strict but legal law of the land and establishing a legitimate enforcement mechanism, United States' forces benefited from the use of a range of severe and effective coercive mechanisms against civilian insurgent supporters.

New policies also allowed more aggressive but just action against insurgents themselves. First, Army units were able to legally seize property from insurgents, further incentivizing them to support the government. Next, the district headquarters authorized special intelligence operations to root out guerillas who had infiltrated local governments. Both of these tactics would have been deemed too harsh under Otis's policies even though they were fully consistent with just war theory. Simultaneously, U.S. forces pursued guerillas relentlessly in the field. The

Army escalated the level of violence through perfectly just policies to such an extent that it compelled the guerillas to surrender.⁴⁶ Fearing death or the harsh penalties they would receive if captured, the insurgent commanders in Northern Luzon all surrendered by April 1901.

Similar results occurred in the District of Southern Luzon, although they took longer to achieve. Initially, the intent behind MacArthur's proclamation was largely ignored by the "mediocre" counterinsurgent commander Major General Bates.⁴⁷ In October, 1901 a much more capable leader, Major General J. Franklin Bell, took the reins in Southern Luzon.⁴⁸

Upon assuming command, following MacArthur's lead, Bell issued General Orders 100 to all of his commanders as a means to achieve his overall purpose "to force insurgents and those in active sympathy with them to want peace."⁴⁹ He qualified that Army actions should be moral and force Filipinos to want peace only via "legitimate" methods, which he directed should not be implemented in a "harsh, humiliating, or overbearing manner."⁵⁰ Bell directed relentless action against insurgents, but clearly dictated to do so within the bounds of the law of armed conflict.

Bell's guidance, later captured in a series of orders that outlined his specific campaign plan, worked extremely well.⁵¹ As in Northern Luzon, empowered provost courts, along with stiffer penalties authorized by the Lieber Code, decreased insurgent morale. Accordingly, insurgents who did not fight in compliance with the laws of war were subject to criminal prosecution and capital punishment if convicted. Fearful of Bell's warning that he would execute insurgents convicted of crimes in U.S. custody, *insurrectos* ceased assassinations of U.S. and Filipino officials.⁵² Prior to Bell's command, convicted insurgents had been let off with much more lenient sentences, which was not a mandate of *jus in bello*. Again, belligerents may punish insurgents who violate the laws of war or who commit criminal acts. Courts also provided strong incentives for the *principales* to stop supporting insurgents. Commanders were able to

lawfully constrain Filipino liberty through such actions as restricting travel outside of towns and enforcing curfews. These actions isolated guerillas, making them much easier to target by Bell's military forces, which he used to pursue insurgents with an aggressive relentless tempo. By May 6, 1902 the last insurgent commander in Southern Luzon surrendered.

Establishing a clear moral code for counterinsurgent conduct that defined precisely what actions constituted enemy activity, was a decisive factor in the U.S. victory in the Philippines Insurrection. The Lieber Code and policy edicts in line with this document's intent, forced Filipinos to choose between supporting the insurgency and nascent government. It made discrimination between insurgents and civilians, and civilians and insurgent supporters achievable, allowing more effective offensive kinetic operations.

Furthermore, General Orders 100 protected United States forces by defeating insurgents. Within eighteen months of MacArthur re-adopting and enforcing the Lieber Code as the moral standard and basis of martial law, the pool of insurgents shrank considerably. Northern Luzon provides clear evidence of the effectiveness of MacArthur's just COIN policies. From October to December of 1900 only 900 insurgents surrendered.⁵³ After MacArthur's proclamation and policy changes of December 1900, these numbers increased more than fifteen fold. In the same region, from January to April 1901, approximately 14,650 *insurrectos* surrendered.⁵⁴ Clearly, with 15,000 fewer insurgents on the battlefield, soldiers were much safer. This is verified by the drop in insurgent contact in the same region to one third of its previous level from January to April 1901.⁵⁵ These facts stand in stark contradiction to the argument that fighting morally exposes counterinsurgents to greater risks.

Violations of the Lieber Code: Effects on the Counterinsurgency

Despite the existence of a comprehensive moral code for counterinsurgency, numerous intentional and unintentional violations occurred in the Philippines. Although these did not compromise U.S. victory, they did hamper its policy objectives. Notwithstanding the stated intent of senior U.S. commanders to avoid conduct that violated the law of armed conflict, in most cases violators erroneously believed that they were acting in accordance with the precepts of General Orders 100. There are clear indications that poor understanding of just conduct led local U.S. leaders to act immorally in the complex and hazardous environment.

In Northern Luzon excessive "brutality" was not tolerated, but it happened nevertheless.⁵⁶ A prime example occurred when Lieutenant Arthur Duncan executed a spy without subjecting him to a criminal tribunal. His defense, when brought before a board of U.S. officers investigating the conduct, was simple but weak: he thought his actions were in accord with General Orders 100.⁵⁷ Section V of the Lieber Code does stipulate that an acceptable punishment for spying is death "by hanging by the neck."⁵⁸ However, a cursory reading of the overall document, particularly Section I, makes it clear that violations should be addressed in trials conducted via military commissions. Only a very narrow and erroneous reading could support Lieutenant Duncan's vigilante justice. The board investigating Duncan recommended no action because of the confusing situation, but it clearly asserted that his actions were wrong and based on an ignorance of the law.

Abuses also occurred in Southern Luzon. One such tactic included destroying civilian property without good cause. Although General Orders 100 allowed destruction of property that was specifically used or was proven to be destined for the enemy, in practice, soldiers clearly

went beyond this standard and used property destruction of a "quasi-acceptable" form of retaliation.⁵⁹ Historian Brian Linn provides an excellent example of one such incident:

When an American guide was murdered in the marketplace at Bauan and witnesses refused to give information, Sumner [the U.S. commander] authorized the burning of the marketplace. The Soldiers, furious at the death of their "mascot," also burned fourteen houses and only stopped the fire when it threatened their own quarters.⁶⁰

The Lieber Code clearly describes conditions under which reprisal could occur. In defining what action can be undertaken as part of military necessity, it specifically advises that this "does not admit of cruelty—that is the infliction of suffering for the sake of suffering, or for revenge."⁶¹ Notwithstanding their understandable anger over the death of their guide and the explicit (but illicit) order of their commander, the soldiers in this case were far too liberal in applying the Lieber Code's sanction of property destruction. They ignored the larger ethical principles that General Orders 100 prescribed.

These two incidents were far from isolated examples of unjust conduct. There were widespread abuses throughout the Philippines. Unintentional transgressions where soldiers misinterpreted General Orders 100 and other more deliberate violations of the law of war, had negative effects on the Administration's ability to achieve its policy objectives. As stated before, anti-colonial opposition to U.S. involvement in the Philippines was significant, represented by groups such as the Anti-Imperialist League whose platform openly declared that it would work to defeat anyone in Congress or the White House who pursued "forcible subjugation."⁶² Atrocities did little to counter the Administration's position that its goal was "benevolent assimilation." Anti-imperialist newspapers publicized "lurid accounts" of U.S. violations contributing to domestic concerns over U.S. legitimacy.⁶³

Public outrage spurred Congress to charge the Committee of the Philippines, also known as the Lodge Committee, with examining U.S. conduct in the Philippines. Between January and June of 1902, the committee conducted extensive hearings that publicized U.S. violations of the laws of war. The New York Times, among other newspapers, published daily accounts of the hearings, although the hearings were closed to the public. Immediately after the hearings, the Congress passed the Philippine Organic Act on July 1, which provided a legislative and judicial system and basic laws for the Philippines under U.S. authority.

On July 4, President Roosevelt formally announced the end of the Philippine Insurrection. The close proximity of these acts with the commission's completion suggests that Congress and the Administration had a clear need to demonstrate an end to the conflict. Although the hearings closed after the last major insurgent commander had surrendered, the question remains whether the government could have sustained support if the hearing had occurred earlier or if the insurgency endured. The fact that Governor-General Taft was reluctant to use military forces to defeat the remaining small pockets of insurgents suggests that the political will did not exist. As a result, it is reasonable to question whether sustained military action would have hastened defeat of remaining irreconcilables and avoided later insurgencies which plagued the Philippines.

There is significant evidence to support the argument that U.S. policies did not sanction immoral conduct: MacArthur and other senior commanders repeatedly referred to General Orders 100 specifically to outline the bounds of morale conduct. Notwithstanding, poor application of the Lieber code and widespread abuses, at multiple levels, indicates that U.S. forces lacked a comprehensive understanding of the law of armed conflict. Although these violations did not cause the U.S. to lose the war, they did affect domestic political will. Had the

conflict endured longer, there is valid debate as to whether the United States could have sustained military involvement long enough to defeat the insurgency. General Orders 100 was effective because it provided a clear way to discriminate between innocent civilians and insurgents, and it opened the door to aggressive but legal tactics to prosecute insurgents. Better training on morality and warfare before and during the conflict could have precluded abuses that detracted from US goals and might have allowed commanders independently to use effective just COIN tactics earlier in the conflict.

Conclusion

The Philippine Insurrection case study affirmed the body of existing research on just war theory and counterinsurgency. Moral tactics are a better method of defeating insurgents and gaining popular support than excessive coercion. Notwithstanding, it also affirmed the adage that laws without morals are made in vain. The U.S. Army's poor understanding of the Lieber Code resulted in numerous violations. If the insurgency had endured in force beyond 1902, the negative effects on U.S. policy could have compromised success.

In order to guard against moral transgressions in current conflicts and to avoid the potentially disastrous results, the U.S. military should employ a vigorous ethical training initiative for its forces. This should not be an abstract program, with ethereal and general concepts whose applications on the modern battlefield are not readily apparent. Instead, it should be based upon a set of imperatives, consistent with international and domestic conventions, specifically tailored to COIN. The precepts derived in the background section of this study provide a starting point that, when fully developed, will provide a good compliment to what already exists in FM 3-24. They could serve as a "moral intent" to provide better understanding and facilitate better application of the specific legal dictates of the rules of

engagement. Additionally, forces should be exposed to the body of existing research on COIN, to counter extant but misguided beliefs that fighting morally exposes soldiers to greater risk.⁶⁴ Although this may be the case in isolated near-term incidents, fighting morally allows aggressive but legal action and creates an environment better suited to gaining popular support, making the COIN environment safer by defeating insurgents and preventing new "converts" to insurgent camps. Such exposure will counter disturbing trends of immoral conduct. Finally, ethical training should highlight the complex conditions and stressors of a COIN battlefield in order to prepare soldiers to recognize and resist the temptations of resorting to unjust tactics when they arise. Trainers can achieve this initially by exposing soldiers to case studies similar to the Philippine Insurrection which provide realistic examples of the tactical and strategic implications of both immoral and moral conduct in a bloody insurgency. After initial ethical training on existing law, the morale precepts supporting it, and its basic application, collective training at all levels should be designed to incorporate moral considerations into existing exercises. Evaluators at these training exercises should incorporate evaluation of ethical performance into their after action reviews. By forcing future counterinsurgents to apply ethical precepts in training, continually reminding them of its importance, and exposing them to negative consequences of not fighting morally, the U.S. military can win over the hearts and minds of its own dissenters while creating more effective counterinsurgents among those that are already convinced of its efficacy.

General McChrystal's just counterinsurgency strategy is the best course for Afghanistan as well as the morally correct way ahead. Although retaining the moral high ground may not promise a quick victory, it will be a decisive weapon in the information campaign for the Afghan people's allegiance and the larger war against Al Qaeda and other totalitarian Islamists. Moral

tactics will facilitate discrimination and proportional action against the Taliban and its supporters without alienating the civilians the Afghan government depends upon for legitimacy. In the United States, it will help to mitigate negative reports of transgressions, preventing them from altering the political calculus of whether domestic support is strong enough to sustain our policy goals of "disrupting, dismantling, and defeating Al Qaeda and its extremist allies."⁶⁵ Combined with a robust ethical training program, General McChrystal's just COIN strategy greatly enhances U.S. chances of success in Afghanistan.

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¹⁴ *Counterinsurgency*, 7-6.

¹⁵ Walzer, 153.

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- ⁵⁹ Linn, 145.
- ⁶⁰ Linn, 144.
- ⁶¹ War Department.

⁶² Henry F. Graff, ed., *American Imperialism and the Philippine Insurrection* (Boston: Little, Brown, and Company, 1969) xv.

⁶³ Linn, 27.

⁶⁴ Couch, 13.

⁶⁵ Barack Obama, Remarks on Afghanistan, December 1, 2009, West Point, <http://abcnews.go.com/Politics/full-transcript-president-obamas-speech-afghanistan-delivered-west/story?id=9220661> (accessed on 21 January 2009).